

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the matter between)
)
)
)
SERVICE EMPLOYEES) FMCS #
051124-00921-A
INTERNATIONAL UNION LOCAL 1107)
GEORGE REEVES and JERRY GILLIE)
)
Grievants) ARBITRATOR'S
AND) DECISION AND
) AWARD
)
HOUSING AUTHORITY OF THE CITY OF)
LAS VEGAS.)
)
Respondent)
_____)

APPEARANCES:

On behalf of the Employee Organization	On behalf of the Employer
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BEFORE:

Fred D. Butler
ARBITRATOR

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I.

PROCEDURAL BACKGROUND

This arbitration arises pursuant to the agreement between the SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (hereinafter referred to as the Union) and the HOUSING AUTHORITY OF THE CITY OF LAS VEGAS(hereinafter referred to as the "HALV"), under which FRED D. BUTLER was selected as Arbitrator and under which this award is final and binding on the parties.

The matter involves the HALV's decision to terminate George Reeves (hereinafter referred to as "Reeves") and Jerry Gillies (hereinafter referred to as "Gillies")(collectively referred to as the "Grievants") from their employment with the Housing Authority for violation of the agency's Personnel Policies and Procedures. The Union filed a grievance maintaining that the action of the HALV is in violation of the collective bargaining agreement. The matter was processed through step two of the grievance procedure and referred to arbitration.

An evidentiary hearing, wherein the parties were afforded full opportunity for examination, cross-examination of witnesses and introduction of relevant exhibits and argument, was held at Las Vegas, Nevada on April 12, 2005.

The HALV was represented by Deverie J. Christensen, Esq. and Richard J. Martinez, Deputy Executive Director. Appearing as witnesses for the HALV was Charles Skvarek, Phong Savanh-Skvarek, Richard J. Martinez and Parviz Ghadiri.

The Union was represented by Brooke D. Pierman, Esq. and Marcus Hatcher, Director of Representation. Appearing as

witnesses for the Union were George Reeves and Jerry Gillies, Grievants.

The parties introduced three (3) joint exhibits at the hearing, JE-1, the Collective Bargaining Agreement Between SEIU Local 1107 and the Housing Authority of the City of Las Vegas dated 2/1/2002-1/31/2005; JE-2, SEIU Local 1107 Grievance Form of Jerry Gillies, dated 8/24/04 and JE-3 SEIU Local 1107 Grievance Form of George Reeves.

Management introduced Exhibits A-T. Namely, A) Notice of Termination August 20, 2004 to George Reeves; B) Notice of Termination August 20, 2004 to Jerry Gillies; C) Photographs of Skvarek's bathroom, August 5, 2004; D) Memo Re: Jerry Gillies Salary Adjustment effective February 1, 2004; E) Grievance Hearing Decision 9/29/2004 to George Reeves; F) Grievance Hearing Decision 9/29/2004 to Jerry Gillies; G) Letter, 10/1/04 to George Reeves; H) Letter, 10/1/04 to Jerry Gillies; I) Letter from Mark Stotik, 10/5/04 regarding George Reeves; J) Letter from Mark Stotik, 10/5/04 regarding Jerry Gillies; K) Letter to George 10/18/04 from Parviz; L) Letter to Jerry Gillies, 10/18/04 from Parviz Ghadiri; M) Letter from Mark Stotik, SEIU Local 1107, October 18, 2004; N) Letter to George Reeves, October 27, 2004 from Human Resources Manager; O) Letter to Jerry Gillies, October 27, 2004 from Human Resources Manager; P) Letter from Mark Stotik SEIU Local 1107, November 5, 2004 to Parviz Ghadiri; Q) Grievance Hearing Decision, November 10, 2004 to George Reeves; R) Grievance Hearing Decision, November 10, 2004 to Jerry Gillies; S) Letter to Mark Stotik from Parviz Ghadiri, November 16, 2004; T) HALV Personnel Handbook.

A tape recording of the hearing was prepared as an extension of the Arbitrator's notes. The record was left open to receive post hearing briefs. The final brief was received on May 9, 2005, therefore the record was closed on that date.

II.

STATEMENT OF THE ISSUE

The parties stipulated at the hearing to the following statement of the issue to be determined.

Whether the Housing Authority of the City of Las Vegas had just cause to terminate George Reeves and Jerry Gillies? If not, what is the appropriate remedy?

III.

CONTRACT PROVISIONS

The terms of the relevant contract provisions, in pertinent

parts, are outlined below.

ARTICLE 11. DISCIPLINE AND DISCHARGE PROCEDURES

Employee Conduct.

It is expected that all HALV employees shall render the best possible service and reflect credit on the HALV, and therefore high standards of conduct are essential. No employee that has completed their probationary period shall be disciplined, unless such discipline is for just cause. Improper conduct may be cause for disciplinary action. . . . The HALV has the right to discharge or otherwise discipline an employee for just cause at any time.

Discipline and Discharge Procedure.

The HALV has the right to discharge or otherwise discipline an employee for just cause at any time. Discipline involves actions taken by the employee's supervisor in a timely manner in situations where specific job-related employee behavior or performance is unacceptable in that the employee has violated the employer's established work rules or performance standards, and it is the intent of the employer to document the infraction(s).

Discipline shall be progressive from minor to major forms of disciplinary actions dependent upon the seriousness of the offense, as a serious offense may result in discipline being imposed at some level other than an oral warning.

HALV PERSONNEL POLICY

Rule 15. CONDUCT & DISCIPLINE

15.1 EMPLOYEE CONDUCT GENERALLY

It is expected that all Authority employees shall render the best possible service and reflect credit on the Authority, and therefore, high standards of conduct are essential.

15.2 IMPROPER EMPLOYEE CONDUCT

Improper conduct may be cause for disciplinary action. The term "improper conduct" means not only an improper action by an employee in the employee's official capacity, but also conduct by an employee not connected with the employee's official duties which affects the employee's ability to perform official duties, and any improper use of the position as to an employee for personal advantage. There is no way to identify every possible violation of standards of employee conduct; therefore, the following is a partial list which will result in corrective action. . . .

15.2(g.) Unlawful absence or abuse of leave privileges, including claim of sick leave under false pretense or misuse of sick leave.

15.2(Q.) Disgraceful and/or abusive personal conduct, which the Agency believes reflects adversely on the employee or authority.

15.3 DISCIPLINARY ACTION

The purpose of disciplinary action is to correct deficiencies in employees' performance, to seek improvement to meet appropriate standards, and/or to correct for violations of these rules. . .

IV. STATEMENT OF FACTS

The following are the findings of facts as determined by the arbitrator based on the evidence and testimony.

The Grievant's Jerry Gillies and George Reeves were hired by the HALV in 1986 and 1992 respectively. Mr. Gillies is a Maintenance Supervisor and is an eighteen-year employee. Mr. Reeves has been employed for thirteen years in the maintenance department as a maintenance worker.. Gillies has been the subject of prior discipline unrelated and different from the type outlined in this matter. He was promoted to the position of Maintenance Supervisor. Reeves is not supervised by Gillies. (Testimony of Gillies and Reeves)

In addition to their employment with the HALV, the Grievants are partners in a business known as G & J Maintenance. The business specializes in the installation and repair of tiles. Their outside business is well known to the HALV and they have never been told that they cannot have outside employment. (Testimony of Gillies and Reeves)

Sometime prior to July 31, 2004 the Grievants, operating as G & J Maintenance, were contacted by Charles Skvarek to inquire about the possibility G & J Maintenance performing tile installation in the shower at his home. The Grievants were referred to Mr. Skvarek by a Ricardo Huerta who recommended them based on his knowledge of their work at the HALV. (Testimony of Charles Skvarek)

After visiting the Skvarek's residence on July 31, 2004, the Grievant's agreed to perform the work for three hundred dollars, with the Skvarek's paying for materials and supplies. ¹(Testimony

¹This amount was later increased to \$350 because the complexity of the work involved. (Testimony of Skvarek, Grievants)

of Charles & Phong Skvarek) On August 1st, the next day, the Grievants accompanied by Mr. Skvarek and his wife went to the tile store to pick out and order the tiles. The Grievants began work that day, but did not complete the work at that time because of problems encountered with the work in question and the fact that there was not enough tile available. They agreed to return on Wednesday, August 4, 2004 to complete the work.

On Wednesday, August 4, 2004 the Grievants returned to complete the job. The Grievants were both scheduled to work at the HALV that day. However, Gillies arranged to take the day off in advance by using compensatory time. Reeves had requested sick leave. (Testimony of the Grievants) At the time of their arrival Gillies was wearing a HALV uniform shirt. They began work at approximately 8:A.M. (Testimony of Charles and Phong Skvarek)

During most of the day, the Grievants had a positive relationship with the Skvareks. Especially Reeves, who established a rapport with Ms. Skvarek and discussed the work and his family with her. (Testimony of Phong Skvarek) However as the day progressed, both Mr. & Mrs. Skvarek became concerned about what they considered to be the apparent frustration of the Grievants with the job because of changes in the shelves and Mr. Skvareks' suspicions that they could not adequately do the job. They also became concerned because the Grievants were consuming beer during the day without eating and appeared to be inebriated.

Sometime around noon of that day, the Skvarek's offered beer to the Grievants. This beer was consumed by them, without taking a lunch break. (Testimony of Phong Skvarek) During the day the Grievants consumed additional beers, which they later purchased or brought with them. (Testimony of Charles and Phong Skvarek) They continued to drink beer during the day and stopped drinking beer between 4:PM and 6:PM. (Testimony of Charles and Phong Skvarek) The Skvareks never told the Grievants to stop drinking nor did they did not mention their concerns directly to them. (Testimony of Charles & Phong Skvarek)

Ms. Skvarek is a school teacher and was on summer vacation at the time. However, Mr. Skvarek had work outside of the home but was able to drop in and out of the home while the Grievants' were working. (Testimony of Charles Skvarek) The Grievants would take periodic breaks during the day. During these breaks and when Mr. Skvarek was present, they would participate in roundtable discussions with him about their company and their work at the HALV. Mr. Skvarek wanted to know how they were able to manage their outside business and still be employed by the agency. (Testimony of Charles Skvarek)

Gillies spoke to Mr. Skvarek about the HALV and his position as Maintenance Supervisor. He boasted about his salary and the fact that his job was not burdensome. He even made a comment

about sitting on a lawnmower all day. Mr. Gillies also spoke about his ability to make things happen concerning the people that were under his supervision. His conversation about the HALV was generally positive. (Testimony of Charles Skvarek)

Sometime after 7:PM, Mr. Skvarek began to believe that the job would not be finished. He felt that the Grievants were inebriated and did not want to finish because he was told by Mr. Reeves that the job was not worth his while. When he approached the Grievants about when the job would be finished, they appeared annoyed and began to gather their tools and leave the job. (Testimony of Charles Skvarek)

A disagreement began over the fact that the job was not done to the satisfaction of Mr. Skvarek. At that time Mr. Skvarek confronted the Grievants about when and whether they would complete the job. In response Mr. Reeves demanded payment. When Mr. Skvarek refused payment, Reeves began to get annoyed and a confrontation and a verbal altercation ensued between the two of them. Mr. Skvarek then agreed to pay one-half of the agreed upon amount and wrote a check made out to cash. (Testimony of Charles Skvarek)

This offer was not acceptable to Mr. Reeves and he demanded the entire amount. After Mr. Skvarek refused, a second altercation began between the two of them. This altercation may have involved mutual physical contact. However Mr. Gillies who witnessed the altercation stepped in between the two of them in order to prevent further physical contact. Mr. Skvarek then demanded that they leave the premises and that he was calling the Las Vegas Police. The Grievants did not leave for another ten minutes. (Testimony of Charles Skvarek)

After the police arrived on the scene, Mr. Skvarek filed an incident report alleging that Mr. Reeves had struck him. (Ex. A-10) Mr. Skvarek was advised by the police officers that he should file a formal complaint if desired. He chose not to do so. (Testimony of Charles Skvarek)

On August 5, 2004, Mr. Skvarek contacted the City of Las Vegas, Office of the Mayor. He wanted to complain about the behavior of the Grievants. He was referred to the HALV where he filed a complaint against the Grievants because of their behavior at his house the day before. (Testimony of Charles Skvarek)

While they knew that the Grievants were not working for the HALV while working at his house, Mr. & Ms. Skvarek wanted to make the city aware of the incidents that had occurred. Both felt that this type of behavior unchecked could place the HALV in a negative light and they feel that the agency should not have individuals working for the city who would behave in this way. (Testimony of Charles & Phong Skvarek) Ms. Skvarek was especially

concerned because Gillies was wearing a HALV shirt which identified him as an HALV employee. (Testimony of Phong Skvarek)

The Skvareks feelings about the HALV have not changed because of the incident and they have no ill feelings about the City or the HALV and do not believe that the negative actions of the Grievants have anything to do with the HALV. (Testimony of Charles & Phong Svarek)

The Office of the Mayor passed on the complaint to the HALV through the Deputy Executive Director Richard Martinez. The complaint was that two HALV employees had been in a confrontation with a citizen on August 4th while working at a private citizen's home. After checking the time records for the two employees involved, it was determined that Gillies was on approved leave time but that Reeves was reported to be out on sick leave on that date.

The Grievants were called into Mr. Martinez's office and advised by him of the seriousness of the allegations and informed that they were being placed on paid administrative leave until an investigation could be completed. (Ex-A-1)

Mr. Martinez conducted an investigation into this matter and into the conduct of the Grievants. This included an interview and obtaining statements from Mr. & Ms. Skvarek and a neighbor, and visits to the site, reviews of the police incident report, review of time records, personnel policies and the Collective Bargaining agreement (R-A 2-13)

The HALV does not prohibit employees from having outside employment as long as the employment does not prevent them from performing their duties for the authority or conflicts with those duties. In addition, the HALV does not have policy that prohibits the wearing of HALV uniforms off duty. Finally the HALV does not have a policy prohibiting employees from drinking while off duty or discussing their jobs or salaries in public. (Testimony of Richard Martinez) However the HALV does have a policy that prohibits using sick leave under false premises. In addition, employees are prohibited from conducting themselves in a manner which the agency believes reflects adversely on either the employee or the HALV. (Testimony of Richard Martinez, Ex-T 65-66)

On August 20, 2004 after the completion of the investigation and upon the recommendation Mr. Martinez, the HALV issued Termination Notices to the Grievants. (Ex A & B) Reeves was charged with violation of HALV Rule 15.2(q) "Disgraceful and/or abusive personal conduct, which the agency believes reflects adversely on the employee or authority" and HALV Rule 15.2(g) "Unlawful absence or abuse of leave privileges, including claim of sick leave under false pretense or misuse of sick leave."

Gillies was charged with violation of HALV rule 15.2(q) "Disgraceful and/or abusive personal conduct, which the agency believes reflects adversely on the employee or authority.

The Union filed a grievance on their behalf, maintaining that the action is without just cause and violation of the Collective bargaining Agreement. A Step 2 Grievance hearing was held on September 16, 2005. At that time the Union raised the additional complaint that the Housing Authority did not conduct a proper investigation into the charges against the Grievants because it failed to interview the Grievants prior to instituting the discipline, in violation of their due process rights.

After considering all of the information presented, the Executive Director concluded that the Reeves and Gillies had not received the proper due process. As a result the grievance was sustained in part and the Grievants were subsequently made whole by being paid retroactively to the date of the original termination. (Ex-E, F, N, O)

The Grievants remained on paid administrative leave pending the HALV's reopening of the investigation into the allegations. The Housing Authority requested that the Grievants participate in the new investigation by being interviewed. (Ex-G & H) However the Union maintained that this was not a new matter. More specifically that the original grievance had not been resolved to the mutual satisfaction of the parties at the Step 2 Grievance hearing. Therefore they requested that the entire matter be referred to arbitration in accordance with the Collective Bargaining Agreement. (JE-1)

On November 10, 2004, the HALV issued a final decision on the grievance and upheld the termination of the Grievants effective on that date. The matter was then referred to arbitration.

V.

POSITION OF THE PARTIES

Management's Position

It is the HALV's position that it has a position of "Public Trust." Because of this the agency maintains that the Personnel Policy allows the agency to discipline employees for both on and off duty misconduct. They contend that in addition to violating the HALV personnel policies, the employees violated the public trust.

They contend that Mr. Gillie's behavior was particularly egregious and that he has a higher duty to the public trust because he is a supervisor. However he knowingly allowed a subordinate, although not directly under his supervision, to violate agency policies.

In addition they contend that Gillies, while wearing a housing authority uniform openly discussed housing authority business and "boasted" about his work and his having control over hiring and firing and the easiness of his job. This, they maintain left a negative impressive on a private citizen.

The uniforms are issued for identification purposes while on duty and even though the employees can take them home, they should not be worn when doing other business such as working for another employer. In addition acting in an abusive way to these citizens, who knew that the Grievants were HALV employees established that they willingly and knowingly placed the agency in a disgraceful and unfavorable light.

Therefore it is the HALV contention that the totality of the circumstances left the citizen with the impression that the employees was demeaning the employer. The fact that there had been alcohol consumed and an attack on a citizen also made it a conduct issue. The fact that the citizen made a direct connection between the employees behavior and the HALV serves to establish the violation.

In prior years, the HALV was the subject of violation of the public trust. HALV employees were filmed using authority equipment and terminated. The HALV cannot afford to have these kinds of incidents occur now or in the future. Employees have been disciplined for using authority equipment for personal use.

In the case of Reeves, there was a clear violation of the policy governing sick leave. Employees either make arrangements to take sick leave in advance or call in. In this case Reeves gave advanced notice as he had done before in order to care for his wife. Therefore, this leave was not questioned. Employees are not allowed use sick leave for any other purpose. Therefore Reeves knowingly and admittingly gave false information.

The agency believes that progressive discipline was not warranted in this action because of the seriousness of this matter.

Therefore the agency requests that the grievance be denied.

Union's Position

It is the Union's position that the incident on August 4, 2004 and the activities of the Grievants at that time was off duty conduct and not governed by the HALV policies and procedures. Therefore, the agency was without authority to impose discipline the Grievant.

The Union also contends that the discipline provision

contained in Article 11 of the Collective Bargaining Agreement defines discipline as on-duty conduct and the HALV has not presented any evidence to show that the Grievant's conduct was job-related or that this conduct affected the operations of the HALV in any way.

The Skvareks admitted that the Grievants were representing themselves and that they did not form a negative opinion about the HALV from the incident. Finally the HALV failed to put forth any evidence to show that the agency lost business, productivity or even public approval.

There are no HALV rules that prohibit employees from wearing uniforms outside of work nor any rules that employees cannot discuss their positions or wage rates with members of the public. There are also no HALV rules prohibiting employees from drinking alcohol on their off hours.

The agency maintains that the actions of the Grievants by getting drunk and assaulting a citizen reflected negatively on the HALV. However, the agency did not present credible evidence to prove either of these allegations. The testimony of Mr. Skvarek was inconsistent and unreliable as he changed his testimony several times, could not remember details and could not determine when beer was purchased or consumed.

The Skvareks testimony was equally as inconsistent as it pertains to the uniform. The Union contends that they were basing their recollection of the uniform by their relationship with other agency personnel.

The Union also contends that the dispute between the Grievants was mutual. Neither of the Grievants was charged nor cited with any criminal violations. There are no charges pending and there is no proof that any assault actually occurred.

The Union maintains that while the Grievants may have exercised poor judgment in their off duty conduct, just cause does not support their termination. According to the agency other employees have been disciplined for actually using agency equipment off duty for their personal use, however these employees were not terminated.

Finally the Union does not dispute the fact that Reeves violated the sick leave policy and made a poor choice in using sick leave when he was not sick. However they do not believe that this is terminable offense

Based on the above the Union requests that the Grievance be granted and that the Grievants be made whole.

VI.

DISCUSSION

The parties agreed verbally that the issue of due process in the investigation is not before this arbitrator and that the matter was resolved and a make whole remedy was provided to the Grievants in October 2004. Therefore, this Arbitrator will not be addressing the merits of that issue.

The discipline of employees of the HALV is governed by Rule 15 of the agency's Personnel Policies. Rule 15 outlines employee conduct generally and attempts to outline the type of improper conduct that would justify discipline as well as the type of discipline that can be taken by the agency for violations. The Rule further states that the purpose of disciplinary action is to correct deficiencies in employee performance to seek improvement to meet appropriate standards and to correct for violations of these rules.

It is not disputed that the activity of the Grievant's in this matter was off-duty conduct away from the HALV. Therefore the first question directly related to just cause is whether or not Article 15 of the Personnel Policy applies to off-duty conduct whether the application of Article 15 to off duty conduct is violative of Article 11 of the Collective Bargaining Agreement.

Article 11 of the Collective Bargaining Agreement states "Discipline involves actions taken by the employee's supervisor in a timely manner in situations where specific job-related employee behavior or performance is unacceptable in that the employee has violated the employer's established work rules or performance standards, and it is the intent of the employer to document the infraction(s)."

According to the Union, Article 11 limits discipline to specific unacceptable job-related employee behavior or performance. Therefore, on-duty conduct. However a closer reading of Article 11 reveals that this article does not specifically mention on or off-duty conduct. As described below there may be instances where the off-duty conduct is so related to the employees position or duties that it can be considered job related.

Arbitrators have traditionally held that an employer has no right to discipline employees for conduct which occurs outside of the workplace and during hours when the employee is not required to be at work. Ford Motor Co. & UAW-CIO, Opinion A-132, Union of the Umpire (H. Shulman 1944) Therefore the general rule distinguishes work time from off duty time.

However Arbitrators have also developed exceptions to this

general rule. Namely, a.) when the off duty conduct harms the company's reputation or product. b.) when the off duty conduct renders the employee unable to perform the duties or appear at work, c.) when the behavior leads to refusal, reluctance or inability of other employee to work with him and d) where the off-duty conduct undermines the ability of the Employer to direct the work. Murray Machine Inc. 75 Lab. Arb (BNA) 312, 314 (1951) (Ferguson, Arb)

The connection between the off-duty conduct and the injury to the business or agency must be reasonable and discernable and not merely speculation.

In the public sector certain positions such as police, fire and educational personnel or other high level personnel occupy a position of a "public trust." For these employees, arbitrators and courts generally show a greater sensitivity to the reputation and mission of the employer as a government entity. Employment in these "public trust positions" decreases the need for a strong nexus. Thus, it is generally easier for a public employer to sustain a dismissal based on off-duty misconduct where the arbitrator recognizes that public trust is a key part of the nexus requirement in the public sector. Traditionally this applies most frequently to police officers, firefighters and teachers. (For examples see City of Stamford, 97 Lab. Arb. (BNA) 261 (1991) (Pattocco, Arb); R, City of Taylor, 65 Lab. Arb (BNA) 147 (1975) (Keefe, Arb); North Haven Board of Education, 59 Lab. Arb. (BNA) 99 (1972) (Purcell, McDonough, Sirabella, Arbs)). There must still however be some nexus between the off-duty conduct and the workplace.

For employees in non-safety positions the nexus requirement is similar to private sector employees. (See U.S. Internal Revenue Service, 77 Lab. Arb. (BNA) 19 (1981) (Edes, Arb))

Arbitrators generally hold that what a person does away from work is not any business of the employer, except under a limited range of circumstances. However, in all cases there must be some connection between an employee's conduct and his employer in order for the employer to age any action.

Nevertheless, employees off duty time should be respected and Arbitrators should only sustain discipline when there is a true nexus between the conduct and the effect on the employer, recognizing that what may seem appropriate to one employer may be inappropriate to another.

In the case before this arbitrator the Grievant's were charged by the agency with off duty misconduct and a violation of Rule 15(q) "disgraceful and/or abusive personal conduct, which the agency believes reflects on the employee or the authority." More specifically the agency contends that the conduct of the

Grievants by allegedly making disparaging remarks, drinking beer excessively² and having a business and personal dispute with a citizen on their off-duty time in some way injured the reputation of the HALV because of its position of "public trust."

The agency states that Gillies as a supervisor occupies this position of public trust because he is a supervisor. The Executive Director of the HALV believes that the nexus was created when Gillies wore his uniform to the Skvarek home, even after admitting that the agency does not have a policy governing the wearing of uniforms off-duty.

It appears reasonable to expect that since the agency issues these uniforms to wear when performing work for the agency that these uniforms should not be used while being employed in other businesses or professions. As Mrs. Svarek observed these uniforms serve as an identifier for the organization and the wearing of the uniform could reflect on the agency. However Mr. Martinez, the agency's Deputy Director and the person who recommended the discipline, testified that the nexus was not the fact that Gillies wore the uniform but the fact that the Skvarek knew that he was an HALV employee.

After a review of all of the relevant evidence and testimony this Arbitrator determines that there was no connection between the employee off duty conduct of the Grievants and the HALV. This entire venture was an independent business relationship between the Grievants as owners of an independent company and Charles and Phong Skvarek.

Even assuming that the agency could have established a nexus, the agency did not show that this conduct was violative of Rule 15.

The agency did not establish that the conversations between Gillies and Mr. Skvarek were more than "boasting" by Gillies. Mr. Skvarek testified that he initiated these conversations when he returned home and while the Grievants were on break. Mr. Skvarek also states that he did not believe that Gillies was in any way critical of the HALV.

In addition the Agency did not present credible testimony about the amount of beer consumed, where it came from or the time frame in which it was consumed. Mr. Skvarek's testimony was inconsistent and contradictory. He also contradicted Mrs. Skvarek's testimony about the amount consumed. She testified that they drank all of the beers and his testimony was that they drank most of them.

Finally the agency did not establish that the Grievants physically attacked Mr. Skvarek. The credible evidence is that some minor physical contact may have evolved between Mr. Skvarek and Reeves. However, it is not determined who initiated this and it appears as though it was mutual, if it existed at all. There was credible testimony that the elevation of this contact was prevented by Gillies intervening. Further Mr. Skvarek did not pursue this matter with the Las Vegas Police Department, when he had the opportunity to do so.

Other than the testimony of the Deputy Executive Director that he believes that any off duty misconduct reflects negatively on the agency and the Executive Director who testified that because the agency had negative publicity in the past about employees, there was no demonstration showing that the incident

between the Skvareks and the Grievants had a negative affect on the agency at all.

To the contrary, the Skvareks, who were the recipients of the off-duty behavior of the Grievants, testified that their opinions of the work the HALV has not changed because of this altercation.

Therefore while the HALV does have a right to discipline employees for off duty misconduct where there is some connection between the off-duty conduct and its effect on the workplace, r in this case, there was no showing that the actions of the Grievants could be considered off duty misconduct or that there was a nexus between their off duty conduct and the HALV.

Therefore it is determined that the agency did not have just cause to discipline the Grievant under Rule 15(q)

With regard to the discipline of Mr. Reeves for claiming sick leave under false pretenses, the agency did possess the requisite just cause. Article 15.2 clearly spells out that it is a violation to do so.

Reeves at first testified that he was not aware of the policy but later admitted that he received the handbook outlining the rule. There can be no doubt that employers have the right to establish sick leave policies that are reasonable. In doing so, employers have a legitimate concern in preventing abuse of sick leave claims.

Reeves later openly and honestly admitted that he had used sick leave under false pretense but just as honestly failed to admit that he had done anything wrong. His comments were "everybody does it." He also testified that he did not have to use sick leave and that he had other accrued leave which he could have used.

Rule 15.3 states, " the purpose of disciplinary action is to correct deficiencies in employee performance, to seek improvement to meet appropriate standards, and/or to correct for violation of these rules." Disciplining Reeves in this case meets these standards.

Reeves willingly and knowingly lied about his need for sick leave and attempts to justify this behavior even as late as the arbitration hearing. While his honesty is appreciated, the fact is that he violated an existing policy and does not appear to be remorseful about it. Nor does he blame it on a mistake.

This Arbitrator does not believe that termination is the appropriate discipline in this case because that level of discipline may only serve to be punitive in nature and not give

the employee an opportunity to correct the behavior. Nevertheless because the agency has just cause, discipline in this case is warranted to correct this behavior and prevent this type of knowing and intentional behavior in the future.

In summary, it is determined that the LVHA did not possess the requisite just cause to terminate Gillies or Reeves for their off duty conduct. However the LVHA did possess the requisite just cause to discipline Reeves for violation of Rule 15. (g) by claiming sick leave under false pretense.

VII.

AWARD

The Grievance is granted in part.

The action against Mr. Gillies is reversed and he should be returned to duty with salary, benefits and seniority and all other make whole remedies from November 10, 2004 to the date of his reinstatement.

The discipline of Mr. Reeves is reversed and modified to include a Discussion and Warning as per Section 15.3.1 of the Rules. Mr. Reeves should be returned to duty but without back pay or benefits.

Dated:

FRED D. BUTLER, Arbitrator